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to give a remedy which it recognizes as analogous to specific performance. This question is discussed in an interesting monograph by Prof. Williston, 20 HARV. LAW REV. 363.

TORTS—PROXIMATE CAUSE—INTERVENING WRONGFUL ACTS.—The defendants stored explosives in a public highway, in violation of the law. Boys who were accustomed to play near the place carried away some of the explosives, and next day the plaintiff's intestate was killed by their explosion. Plaintiff brought an action for damages for his wrongful death. *Held*, the plaintiff can not recover. *Perry v. Rochester Lime Co.* (N. Y.), 113 N. E. 529. See NOTES, p. 137.

TRUSTS—MISAPPROPRIATION OF FUNDS—LIABILITY OF BANK.—An executor kept his individual account in the defendant bank, and the funds of the estate in another bank. At different times he drew checks as executor payable to himself as an individual which he deposited to his individual account, until his entire account was composed of trust funds. He then drew a check on the defendant bank to pay a debt which he owed it. A shortage being found in the executor's accounts, the defendant was sued for all trust funds deposited with it. *Held*, the bank is liable for the amount of the debt paid to it and all funds deposited with it after such payment. *Bischoff v. Yorkville Bank* (N. Y.), 112 N. E. 759.

There are three ways in which a bank may incur liability for the misappropriation by a fiduciary of money deposited with it: by breach of a contract, express or implied, between itself and the owner of the fund; by appropriating the fund to the payment of a debt owed it by the fiduciary; and by knowingly assisting the fiduciary to perpetrate a fraud. These three grounds of liability are distinct; but in a given case the bank's liability may be placed on any one or more of them.

That the bank can be held liable for the breach of its contract is clear, and gives little trouble. *Am. Nat. Bank v. Fidelity, etc., Co.*, 129 Ga. 126, 58 S. E. 867, 12 Ann. Cas. 666. Thus, a bank was held liable for the amount of a check drawn to the order of its cashier to be deposited to the account of a trustee but which the bank deposited to his individual account. *Duckett v. National Mechanics Bank*, 86 Md. 400, 38 Atl. 983, 39 L. R. A. 84, 63 Am. St. Rep. 513.

In order to be held liable to the true owner for misappropriated funds which were used to pay a debt owed it, a bank must, by the weight of authority, know, or have reasonable cause to believe, that the funds were of a fiduciary character. *Wood v. Boylston Nat. Bank*, 129 Mass. 358, 37 Am. Rep. 366. But in such cases very slight circumstances are sufficient to put the bank on notice, and when a check which is signed by a person in the capacity of a trustee is presented in payment of the bank's own claim; it is thereby put on notice and must ascertain at its peril the validity of the transaction. *Ward v. City Trust Co.*, 192 N. Y. 61, 84 N. E. 585. And even where the bank has no notice, it seems that the true owner may recover the funds if the bank has not changed its position in reliance upon the apparent ownership of the funds, notwith-